IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

First Appeal From Order No. 1326 of 2001
(Old No. 612 of 1985)

Oriental Insurance Co. Ltd. through its
Senior Divisional Manager ...Appellant

Vs

1. Smt. Bhubaneshwari Devi W/o Sri Ganesh Singh
2. Surendra Singh
3. Ravindra Singh
4. Devendra Singh
   All three are Sons of Sri Ganesh Singh under the Guardianship of their mother Smt. Bhubaneshwari Devi
   All R/o Village Balasur Halqa Sukhrao
   Tahsil Kotdwar, District Garhwal
5. Sangram Singh S/o Sri Dharama Singh
   R/o Village Ratgaon
   Police Station Garur
   District Chamoli
6. Garhwal Motor Owners Union Ltd.
   Kotdwara through its
   General Manager ... Opposite Parties / Respondents.

Sri Deepak Rawat, learned counsel for the appellant
Sri S.N. Babulkar, learned senior Advocate assisted by Sri Tanuj Semwal, learned counsel for the opposite party No.5

Hon'ble B.C. Kandpal, J.

This Appeal from Order, under Section 110-D of the Motor Vehicles Act, has been preferred by the appellant – Sri Sangram Singh (owner) against the judgment and award dated 03.06.1985, in M.A.C.P. No. 4 of 1984, passed by M.A.C.T./District Judge, Pauri Garhwal, by which the Tribunal has awarded an amount of Rs. 30,000/- as compensation along with an interest @ 6% per annum to the claimants-Smt. Bhuwneshwari Devi and his minor sons.

2. Heard Sri Deepak Rawat, learned counsel for the appellant, Sri S.N. Babulkar, learned senior Advocate assisted by Sri Tanuj Semwal, learned counsel for the opposite party No. 5 appellant, and perused the record.

3. Learned counsel for the appellant has confined his argument only to the point that the liability of the Insurance Company at the time of the accident in view of the provisions of Section 95(1) (b) (ii) read with Sections 95(2)(b) (ii) and 95 (2) of the Motor Vehicles Act, was upto an extent of Rs. 5,000/- each passengers and Rs. 75,000/- in all where the vehicle was registered to carry more than 30 and not more than 60 passengers. The argument of the learned counsel for the appellant is that a passenger bus is involved in this case, which was carrying the passengers for hire or reward at the time of the accident, therefore, the provisions contained in Section 95(1) (b)(ii) read with Section 95 (2)(b)(ii) of the M.V. Act become applicable in this case.

4. The record reveals that the motor bus No. USY 3180 on 08.07.1983 while on way from Kotdwar to Pauri Garhwal, fell down from the road towards its right side. The bus was full of passengers and out of the total passenger, 7 or 8 passengers died at the spot while the others suffered injuries. The Tribunal, after the assessment of the evidence, awarded an amount of Rs. 30,000/- to the claimants in this case as compensation, who are the wife and children of the deceased Sri Ganesh Singh Aswal, who died in the accident.

5. The Hon'ble Apex Court in the case of ***Road Transport Company Vs. Bhan Singh and another,*** reported in ***II (1998) ACC 190 (SC)*** has held that the liability of the Insurance Company will have to be determined under Section 95(2) (b)(ii) of the M.V. Act.

6. In the instant case, it is not in dispute that at the relevant time Section 95 (2)(b)(ii) MV Act limited the liability of the Insurance Company to the extent of Rs. 5,000/- for each passenger and Rs. 75,000/- in all, where the vehicle was

registered to carry more than 30 but not more than 60 passengers.

7. The vehicle involved in the accident in the present case was a passenger bus, in which the passengers were being carried for hire or reward. Therefore, in view of the Hon'ble Apex Court's decision (Supra), the liability of the Insurance Company would be only upto an extent of Rs. 5,000/- per passenger.

8. It has been submitted by Sri S.N. Babulkar, learned Senior Advocate appearing on behalf of the opposite party No. 5 – Sangram Singh who is the owner of the offending bus in question that he has already deposited an amount of Rs. 65,665/- in the year 1997-98 in pursuance to the recovery notice issued against him on 18.10.1997. In case, if it is so, then the amount for which the owner of the vehicle is held to be liable to pay as compensation to the claimants, shall be adjusted towards the total payment to be made by him.

9. The appeal is thus allowed. The impugned judgment and award dated 03.04.1985, in MACP No. 4 of 1984, passed by M.A.C.T/District Judge, Pauri Garhwal, is modified upto the extent that the Oriental Insurance Company/appellant is liable to pay the compensation for Rs. 5,000/- only.

10. It is made clear that the liability of the owner of the offending bus is not affected in any manner to pay the rest of the amount of the impugned award.

(B.C. Kandpal, J.)

11.09.2006
ASWAL